

IN RE)
CAPITAL ONE TELEPHONE CONSUMER)
PROTECTION ACT LITIGATION,)
) Docket No. 12 C 10064
) Chicago, Illinois
) November 18, 2014
) 9:51 a.m.

TRANSCRIPT OF PROCEEDINGS - Status
BEFORE THE HONORABLE JAMES F. HOLDERMAN

APPEARANCES:

For Plaintiffs and
Liaison Counsel:

KEOUGH LAW, LTD., by
MR. KEITH J. KEOUGH
55 West Monroe Street
Suite 3390
Chicago, IL 60603

For the Plaintiffs: LIEFF, CABRASER, HEIMANN & BERNSTEIN, by
MR. DANIEL M. HUTCHINSON
(via conference call)
275 Battery Street
29th Floor
San Francisco, CA 94111

BURKE LAW OFFICES LLC by
MR. ALEXANDER H. BURKE
155 North Michigan Avenue
Suite 9020
Chicago, IL 60601

TERRELL, MARSHALL, DAUDT & WILLIE, PLLC, by
MS. BETH TERRELL (via conference call)
936 North 34th Street
Suite 300
Seattle, WA 98103

1 APPEARANCES (continued):

2
3 For Plaintiff Larry Kopchak:

4 HAYS CAULEY, by
5 MS. PENNY CAULEY (via conference call)
6 549 West Evans Street
7 Suite E
8 Florence, SC 29501

9 For Lemberg Law Plaintiffs:

10 LEMBERG & ASSOCIATES, by
11 MS. JENY DeFRANCISCO (via conference call)
12 1100 Summer Street
13 Stamford, CT 06905

14 For Plaintiff Matthew Fallesen:

15 ROBINSON BRADFORD, LLP, by
16 MR. MATTHEW C. BRADFORD
17 (via conference call)
18 3255 West March Lane
19 Suite 230
20 Stockton, CA 95219

21 For Capital One: FAGRE BAKER DANIELS, by
22 MS. EILEEN M. HUNTER
23 2200 Wells Fargo Center
24 90 S. Seventh Street
25 Minneapolis, MN 55402

For Objector
18 Jeffrey T. Collins: WILLIAMS MONTGOMERY & JOHN LTD. by
19 MS. KIRSTEN B. IVES
20 233 S. Wacker Drive
21 Suite 6100
22 Chicago, IL 60606-6359

23 For Capital Management
24 Services and
25 NCO Financial: SESSIONS, FISHMAN, NATHAN & ISRAEL, by
MR. DANIEL W. PISANI
55 West Monroe Street
Suite 1120
Chicago, IL 60603

1 APPEARANCES (continued):

2 For Leading Edge
3 Recovery Solutions: HINSHAW & CULBERTSON, LLP, by
4 MR. ALAN I. GREENE
5 222 North LaSalle Street
6 Suite 300
7 Chicago, IL 60601
8
9
10
11
12
13
14
15
16
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18
19

20 Court Reporter: LISA H. BREITER, CSR, RMR, CRR
21 Official Court Reporter
22 219 S. Dearborn Street, Room 1802-C
23 Chicago, IL 60604
24 (312) 818-6683
25 lisa_breiter@ilnd.uscourts.gov

1 (In open court.)

2 THE CLERK: 12 C 10046, Capital One Telephone Consumer
3 Protection Act.

4 MR. KEOUGH: Good morning, your Honor. Keith Keough,
5 liaison counsel.

6 MR. BURKE: Good morning, Judge. Alexander Burke,
7 class counsel.

8 MS. IVES: Good morning, your Honor. Kirsten Ives,
9 I-V-E-S, on behalf of Objector Collins.

10 MS. HUNTER: Good morning, your Honor. Eileen Hunter
11 for defendant Capital One.

12 MR. PISANI: Good morning, your Honor. Daniel Pisani
13 on behalf of the defendant Capital Management Services.

14 MR. GREENE: Good morning, your Honor. Alan Greene
15 for the defendant, Leading Edge Recovery Solutions.

16 THE COURT: Good morning to all of you. Today we have
17 just a limited matter to address, and that is the request for
18 additional discovery. I see that Judge Kim has entered an
19 order, entered an order yesterday afternoon. What is the
20 status?

21 Do we have folks on the phone? Oh, okay. Well, let
22 me -- my clerk has reminded me that we have some folks on the
23 phone. Before I hear Mr. Keough's comments, let me ask the
24 folks on the phone to identify themselves following the usual
25 procedure that we follow, which is to start with the eastern

1 part of the United States and work our way west.

2 Anybody east of the Rockies?

3 MS. CAULEY: Penny Cauley on behalf of Dorothy and
4 Lawrence Johnson.

5 THE COURT: All right. Good morning, Ms. Cauley. And
6 you're in South Carolina?

7 MS. CAULEY: Yes, sir.

8 THE COURT: All right. Anybody else east of South
9 Carolina?

10 MS. DeFRANCISCO: Good morning, your Honor. Jeny
11 DeFrancisco representing the individual Lemberg Law plaintiffs.

12 THE COURT: You know, Ms. DeFrancisco, you kind of cut
13 out a little bit. I don't know if you were talking too close
14 to the phone or whether there was interference. But where are
15 you located?

16 MS. DeFRANCISCO: I'm in Connecticut, your Honor.

17 THE COURT: All right. Anyone else east of the
18 Rockies? Okay. Let's move east of the -- I'm saying east of
19 the Rockies. I meant Alleghenies.

20 Let's move to the Mississippi River. Anybody east of
21 the Mississippi River? All right. That would include anyone
22 in Chicago. So it's a very cold day, almost record-setting day
23 for cold in Chicago.

24 So I would not have in any way thought that if any of
25 the folks who are here from Chicago who are standing in the

1 courtroom decided they'd rather stay in the warmth of their
2 offices, they certainly could have today and phoned it in, but
3 have not.

4 Now moving to east of the Rockies, west of the
5 Mississippi. Hearing no response to that, let's move to the
6 West Coast. Anybody on the West Coast?

7 MR. HUTCHINSON: Good morning, your Honor. Daniel
8 Hutchinson of Lieff, Cabraser, Heimann & Bernstein, co-lead
9 counsel for the class.

10 THE COURT: Yes. Mr. Hutchinson, and you are again
11 where?

12 MR. HUTCHINSON: I am in Oakland, California, your
13 Honor.

14 THE COURT: Okay. Anyone else out in that neck of the
15 woods?

16 MS. TERRELL: Good morning, your Honor. Beth
17 Terrell, I'm in Seattle, on behalf of the plaintiffs in the
18 class.

19 THE COURT: Good morning. Thank you, Ms. Terrell.
20 Anybody else?

21 MR. BRADFORD: This is Matthew Bradford for plaintiff,
22 Matthew Fallesen.

23 THE COURT: All right. And Mr. Bradford, where are
24 you?

25 MR. BRADFORD: Right now, I'm in Terrell, California.

1 THE COURT: Where in California?

2 MR. BRADFORD: My firm is in Stockton, California, but
3 I have a trial today and I'm in Terrell, California.

4 THE COURT: My clerk wrote down Stockton. Is that
5 where you are?

6 MR. BRADFORD: Yes.

7 THE COURT: My court reporter heard you better than I
8 could.

9 Okay. Anyone else? Okay.

10 Anyone east of Stockton? Anyone west of Oakland?
11 Nobody from San Francisco?

12 Okay. All right. Now, Mr. Keough, what's the
13 situation?

14 MR. KEOUGH: Thank you, your Honor. The objector
15 indicated they will be filing something, and there's also a
16 dispute. We were before Judge Kim on that.

17 He issued a minute order a couple of minutes ago
18 setting a quick hearing on Friday resolving the dispute on
19 Friday, and we'll move forward on that topic. I think I can
20 hand up the order, if you want. I'm sure you haven't seen it.

21 THE COURT: Well, as a matter of fact, I said he
22 entered an order yesterday, but I was off a day. And in fact,
23 my very astute senior law clerk had just picked it up and
24 printed it out for me so I have it in front of me just moments
25 ago.

1 So I see that what Judge Kim has done is any motion to
2 compel by Mr. Collins is to be filed by tomorrow, a response
3 from the class by Thursday with a hearing at 12:30 on Friday,
4 the 21st. All right. And that's the status?

5 MR. KEOUGH: That's the status, your Honor. Also,
6 Capital One filed a status report on the objectors who
7 indicated they intended to appear and the ones who they weren't
8 quite sure on, and that was filed the other day.

9 THE COURT: And I've reviewed that. And again,
10 Ms. Hunter, as you know, I appreciate the efforts that you
11 folks put in to keep the accurate records in the record as to
12 what objectors will be desirous of hearing, whether they're
13 timely or they're not timely.

14 And my understanding of reviewing that document
15 No. 256 is that of those objectors who have expressed a desire
16 to attend and appear, setting aside the timeliness or the
17 untimeliness, it's a total of a dozen people. Am I correct on
18 that?

19 MR. BURKE: That's my count, Judge.

20 THE COURT: Yeah. Five timely people who intend to
21 appear, including Mr. Collins; one untimely objector on page 2
22 of your report, and then two timely objectors whose intent to
23 appear is unclear. And then four untimely objectors whose
24 intent to appear is unclear.

25 That tallies up to 12. And I always appreciate it

1 when counsel and my clerks keep my math straight. So comments,
2 thoughts?

3 MR. KEOUGH: Well, your Honor, as indicated before, we
4 think you can keep the date and hold any ruling till
5 afterwards. As you indicated, if you feel the due process has
6 been comported with and you want to give everyone more time,
7 you know, I think we set a date in January last time.

8 It's obviously -- you know, we're concerned obviously
9 if the Court should have sufficient time to review everything.
10 We're not trying to rush you. So that's our thoughts on it.

11 THE COURT: Well, and assuming Judge Kim rules the
12 afternoon of Friday and he orders further production, are you
13 going to produce on Saturday? I know you're going to try,
14 Mr. Keough, but...

15 MS. IVES: Your Honor, on behalf of Objector Collins,
16 we're currently due on the 24th with our papers to file. And
17 assuming we get the discovery, we have an expert involved as
18 well. So we would not be able to turn it around by the
19 24th even if we received it within an hour of his ruling.

20 THE COURT: Here's what I propose: We move the entire
21 fairness hearing to the 15th of January. I ask that notice be
22 sent to the 12 people who have objected whose intent is clear
23 that they want to appear or whose intent is unclear in that
24 they made no remarks.

25 MR. KEOUGH: Your Honor -- sorry. I was going to say

1 my office will send notice to all those people.

2 THE COURT: Yeah, if you would. And then what we will
3 do on the date of the hearing on the 9th, I will ask my
4 clerk -- after the morning motion call, I will ask my clerk to
5 take attendance up through anyone who comes into the courtroom
6 by 11:30.

7 It's noticed for 11:00. So find out who came, and my
8 clerk would then inform those people that because of other
9 matters involving the case we had to address, the date for the
10 hearing is now the 15th of January at -- what time did we set
11 for that? Was it 11:00?

12 MR. GREENE: You didn't actually set that date.

13 THE COURT: I didn't set the date. But all you folks
14 can make it on the 15th, right? Okay. I wrote in my book the
15 11 or 11:00 o'clock on the 15th. So let's stick with that.

16 I will then be able to rule in advance of that,
17 address whatever issues I can before that, identify whatever
18 issues there are that need to be addressed at the hearing, and
19 we can finalize that.

20 But let me also say, you know, plaintiffs' class
21 counsel certainly can talk to the folks who are objecting.
22 I've reviewed generally some of the objections that they've
23 addressed to me.

24 And perhaps there can be some -- within the context of
25 the settlement, perhaps there can be some further assuaging or

1 assuaging of the concerns expressed by some of the objectors.
2 I mean, frankly, as far as I can tell -- and I've got
3 Mr. Collins not only in this case, but I've got another non --
4 well, class action but non-multi district litigation case.

5 Do you represent him in that case, too?

6 MS. IVES: No. I only have one before Kennelly, so
7 no, a different case.

8 THE COURT: That's a different case?

9 MS. IVES: Yes.

10 THE COURT: Is that for Mr. Collins?

11 MS. IVES: No. Different objector. Same Class Action
12 Fairness -- Center for Class Action Fairness.

13 THE COURT: Okay. Well, if I'm correct, we have a
14 Jeffrey Collins, don't we? I'm not sure it's the same guy.
15 Not sure it's the same? Okay. We'll double check.

16 MS. IVES: I don't know that it is.

17 THE COURT: It may not be.

18 All right. I've got a couple of class actions that
19 are coming down to the wire, and we have similar objections.
20 But in any event, if the concerns of the objectors can be
21 addressed, then perhaps there could be a smoother resolution at
22 the fairness hearing. So...

23 MR. KEOUGH: Thank you, your Honor. I also want to
24 point out that we'll update the website, too, to provide notice
25 for anybody who is looking at that.

1 THE COURT: If you would.

2 MR. KEOUGH: And the last time we were here, you said
3 you wanted to keep the December 9th date for a status on the
4 individual cases. Mr. Lavery wanted to keep that date to
5 report on a Rule 30(b)(6) deposition. We're still going to
6 keep it at 11:00 o'clock?

7 THE COURT: Since it's the individual cases, we don't
8 have to provide the due process notice, why don't we move it up
9 a little bit, do it at 9:45.

10 The reason I was a little slow getting off this
11 morning, you may know that the Chicagoland area has had some
12 transportation problems today because of the cold weather and
13 other reasons. And I thought I'll just start a little later on
14 my calls.

15 But let me double check with my clerk. How full a day
16 do we have on the 9th?

17 THE CLERK: No.

18 THE COURT: Not too bad? Okay. Let's say 9:45. Then
19 you folks won't have to wait too long.

20 We're good even though it's a Harder case. I'm making
21 a silly joke. Anything else we need to address today then?

22 MS. IVES: Do you want to give Objector Collins a date
23 by which he has to file, or did you want to wait for Judge
24 Kim's ruling to see exactly what's going to happen with
25 discovery?

1 THE COURT: I think it might be good to have a date.
2 What date would you like? I know you want more.

3 MS. IVES: No, it's just depending on --

4 THE COURT: We'll negotiate it. What date would you
5 like?

6 MS. IVES: Obviously post Thanksgiving given the fact
7 that we don't know how quick of a turnaround Judge Kim will
8 order in terms of when we'll get the production, or we could
9 say a week after Judge Kim orders the production, if that would
10 make sense.

11 THE COURT: Well, you're going to get a production.

12 MS. IVES: Well, if we get a production. He hasn't
13 even ordered anything yet.

14 MR. KEOUGH: Just to be clear, we provided the
15 discovery they asked for. They're talking about new discovery,
16 which is before Judge Kim. And we gave it to them in Excel
17 format that they asked for so they could plug and play.

18 So if you want to set a springing date, one if he
19 denies the motion, one if he grants it. You know, I don't know
20 if that's overcomplicating it.

21 THE COURT: Okay. Well, why don't -- let's try that
22 approach. That's a good approach. The springing date, let's
23 assume he denies the motion then everything remains as exists
24 now. And is there going to be any further filing by
25 Mr. Collins?

1 MS. IVES: Yes, there will be a filing regardless.

2 THE COURT: Okay. Then can you get it in the -- you
3 want it after Thanksgiving.

4 MS. IVES: Yeah, if we're working with a new
5 production.

6 THE COURT: All right. Can you do it by Wednesday,
7 the 3rd of December.

8 MS. IVES: Sure.

9 THE COURT: That's certainly sufficient time.

10 MS. IVES: That's fine, your Honor.

11 THE COURT: Response?

12 MR. KEOUGH: Could we have until December 12th, your
13 Honor?

14 THE COURT: Yes, December 12th. That's a Friday. Any
15 replies?

16 MS. IVES: Let's set a date, and we may not file one
17 or we may.

18 THE COURT: The 16th.

19 MS. IVES: Sure.

20 MR. KEOUGH: Your Honor, if I may, they've already
21 filed their objection. This is supplemental.

22 THE COURT: This is supplemental discovery to support
23 the objection.

24 MR. KEOUGH: I guess what I was trying to say was that
25 since they've already objected, that we respond. They're

1 getting a supplemental reply. We'll respond to that. I don't
2 know if a reply is then needed again.

3 THE COURT: All right. You know what, let's do this:
4 Let me allow any further filing by anyone -- I mean, you're
5 going to -- your folks and you, Mr. Keough, will be filing by
6 the 12th.

7 If there's any further filing by anyone, the objector
8 has the burden of persuasion. So the objector should get the
9 last word. It would just be a supplement to the objection.

10 MR. KEOUGH: Your Honor, if I may, I guess we're the
11 one who filed the final approval motion. We are the one who
12 filed the motion for fees. We are persuading you that the fees
13 are appropriate.

14 THE COURT: You think you have the burden of
15 persuasion.

16 MR. KEOUGH: Well, if you want to say we don't, your
17 Honor...

18 (Laughter)

19 THE COURT: You know what, you're right, let's stick
20 with the 12th. That will be the last filing. I'll then have
21 plenty to review, and I'll be able to address whatever the
22 issues are at that point. You're right, Mr. Keough. Okay?

23 MR. KEOUGH: Thank you, your Honor.

24 THE COURT: All right.

25 MR. BURKE: Very good.

1 THE COURT: That's good. All right. Anything else?

2 All right. In connection with the non-class folks
3 that remain in the case, and I guess Ms. Cauley,
4 Ms. DeFrancisco, we've got some other folks as well, you folks
5 are taking the laboring oar on that discovery, Ms. Cauley?

6 MS. CAULEY: Yes. I'm working with Mr. Lavery. We're
7 trying to set the depositions of Capital One in January.

8 THE COURT: Okay. All right. And we will know what
9 those dates are by the 9th --

10 MS. HUNTER: Yes, your Honor.

11 THE COURT: -- Ms. Hunter?

12 Is that right, Ms. Cauley?

13 MS. CAULEY: Yes. I believe Mr. Lavery's already
14 passed on some dates that he and I both had available.

15 THE COURT: Okay.

16 MS. CAULEY: They're just checking with their witness.

17 THE COURT: Okay. All right. Well, then I'll see you
18 folks in connection with the individual cases that remain and
19 the discovery that will be taking place at -- on the 9th at
20 9:45, 9th of December at 9:45. Thank you.

21 MR. KEOUGH: Thank you.

22 MS. CAULEY: Thank you, your Honor.

23 MR. KEOUGH: Have a good Thanksgiving, your Honor.

24 THE COURT: You too. Have a good Thanksgiving. Happy
25 Thanksgiving to everybody.

(Concluded at 10:11 a.m.)

* * * * *

C E R T I F I C A T E

I certify that the foregoing is a correct transcript of the
record of proceedings in the above-entitled matter.

/s/ LISA H. BREITER

November 20, 2014

LISA H. BREITER, CSR, RMR, CRR
Official Court Reporter